AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-020 Purpose. (1) The intent of this chapter is to establish minimum guidelines to assist all counties and cities ((~~statewide~~)) in classifying and designating agricultural lands, forest lands, mineral resource lands, and critical areas. ((~~These guidelines shall be considered by counties and cities in designating these lands.~~))

(2) Growth management, natural resource land conservation, and critical areas protection share problems related to governmental costs and efficiency. ((~~Sprawl and~~)) The unwise development of natural resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life. It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, ecological, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect these lands.

(3) In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and the protection of critical areas, and to preclude land uses and developments which are incompatible with natural resource lands and critical areas. When classifying and designating natural resource lands and critical areas, counties and cities should integrate regulatory and nonregulatory approaches together in a comprehensive program that relates to existing local, state, and federal efforts. An integrated approach should also consider other applicable planning requirements, including the need to identify open space corridors in RCW 36.70A.160, and the need to include the best available science in policies and regulations protecting critical areas in RCW 36.70A.172.

(4) There are qualitative differences between and among ((~~natural resource lands and~~)) critical areas. Not all areas and ecosystems are critical for the same reasons. Some are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. ((~~Hence,~~)) Classification and designation of critical areas is intended to lead counties and cities to recognize the differences among these

areas, and to develop appropriate regulatory and nonregulatory actions in response.

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relative economic importance to sustaining agricultural industries in an identified geographic area.

(6) Counties and cities required or opting to plan under the ((~~Growth Management~~)) act ((~~of 1990~~)) should consider the definitions and guidelines in this chapter when preparing development regulations ((~~which~~)) that preclude uses and development incompatible with natural resource lands and critical areas (see RCW 36.70A.060). Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect critical areas. ((~~Thus~~)) For each natural resource land type and for each critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

(7) It is the intent of these guidelines that critical areas designations overlay other land uses including designated natural resource lands. ((~~That is~~)) For example, if two or more land use designations apply to a given parcel or a portion of a parcel, both or all designations ((~~shall~~)) must be made. Regarding natural resource lands, counties and cities should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue. Counties and cities should encourage ((~~utilization of~~)) resource land managers to use the best management practices of their industry, especially where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas, and with special consideration for conservation or protection measures needed to preserve or enhance anadromous fisheries.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural,

viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water ((~~are~~)), including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge due to impervious surfaces. Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat.

(3) "City" means any city or town, including a code city.

(4) "Critical areas" include the following ((~~areas and ecosystems~~)):

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture ((~~Soil~~)) Natural Resources Conservation Service Soil ((~~Classification System~~)) Survey Program, may experience ((~~severe to very severe~~)) significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6) "Forest land" is land primarily ((~~useful for~~)) devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, ((~~for commercial purposes,~~)) and that has long-term commercial significance ((~~for growing trees commercially~~)). These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(7) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and ((~~the like~~)) areas subject to ponding.

(8) "Geologically hazardous" areas are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(9) ((~~Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.~~)) (a) "Fish and wildlife habitat conservation areas" are areas designated for the critical role they serve in sustaining needed habitats and species for the functional integrity of the ecosystem. These areas include a seasonal range or habitat element where a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative population density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(10) "Landslide hazard areas" are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Minerals" include gravel, sand, and valuable metallic substances.

(13) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(14) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals,

domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, ((~~or~~)) soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species as designated locally.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. ((~~When allowed to spread over wide areas,~~)) Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Volcanic hazard" areas shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas ((~~created~~)) to mitigate conversion of wetlands, if permitted by the county or city.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-040 Process. (1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management

process. ((~~Together~~)) These steps, outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the ((~~Growth Management~~)) act, the timing of the first steps ((~~coincides~~)) coincided with development of the larger vision through the comprehensive planning process. ((~~People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process.~~

~~Under~~)) (2) The ((~~Growth Management~~)) act((~~,~~)) required preliminary classifications and designations ((~~will~~)) of natural resource lands and critical areas to be completed in 1991. ((~~Those~~)) Counties and cities planning under the act ((~~must also~~)) were to enact interim regulations to protect and conserve these natural resource lands and critical areas by September 1, 1991. By July 1, 1992, counties and cities not planning under the act ((~~must~~)) were to bring their development regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act ((~~must~~)) were to adopt comprehensive plans, consistent with the goals of the act. Implementation of the comprehensive plans ((~~will~~)) was to occur by the following year.

((~~(1)~~)) (3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations. Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

(4) Classification is the first step in implementing RCW ((~~36.70A.050. It means~~)) 36.70A.170 and requires defining categories to which natural resource lands and critical areas will be assigned.

(a) Counties and cities are encouraged to adopt classification schemes that are consistent with federal and state classification schemes and those of adjacent jurisdictions to ensure regional consistency. Specific classification schemes for natural resource lands and critical areas are described in WAC 365-190-050 through 365-190-130.

(b) When classifying natural resource lands, counties and cities should consider how the range of classifications may change over time due to changes in demand, energy costs, and resource availability. Mineral resource lands are a unique type of natural resource land with potential for different land uses after mining is completed.

(c) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the department of ecology, and the priority habitats and species categories and recommendations from the department of fish and wildlife. The department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation.

(5) Designation is the second step in implementing RCW 36.70A.170.

(a) Pursuant to RCW 36.70A.170, natural resource lands and critical areas ((~~will~~)) must be designated based on ((~~the~~)) their defined classifications. ((~~Designation establishes,~~)) For planning purposes, designation establishes:

(i) The classification scheme;

(ii) The general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and

(iii) The general distribution, location, and extent of critical areas.

(b) Inventories and maps can indicate designations of natural resource lands. In ((~~the~~)) circumstances where critical areas ((~~(e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.)~~)) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

(c) Designation means, at ((~~least~~)) a minimum, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

(d) When designating natural resource lands, counties and cities should consider the economic conditions affecting resource industries, the minimum amount of natural resource lands needed to support ancillary processing businesses, and the need to buffer these land uses from surrounding development impacts over time. Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

(6) Classifying, inventorying, and designating lands or areas

does not imply a change in a landowner's right to use his or her land under current law. The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt development regulations to conserve and protect designated natural resource lands and critical areas. The purpose of designating natural resource lands is to enable industries to maintain access to lands with long-term commercial significance for agricultural, forest, and mineral resource production. The purpose is not to confine all natural resource production activity only to designated lands nor to require designation as the basis for a permit to engage in natural resource production. The department ((~~of community development will~~)) provides technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

((~~These guidelines~~)) (7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. ((~~That is,~~)) Overlapping designations should not necessarily be considered inconsistent. If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.

(a) If a critical area designation overlies a natural resource land designation, both designations apply. For counties and cities required or opting to plan under ((~~chapter 36.70A RCW~~)) the act, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

((~~(2)~~)) (b) If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated.

(8) Counties and cities ((~~shall~~)) must involve the public in classifying and designating natural resource lands and critical areas. The process should include:

(a) Public participation program:

(i) Public participation should include, at a minimum, representative participation from the following entities: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.

(ii) Counties and cities ((~~should~~)) are encouraged to consider ((~~using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit),~~

~~newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used~~)) a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(iii) The department ((~~of community development will~~)) provides technical assistance in preparing public participation ((~~plans, including: A pamphlet series, workshops, and a list of agencies available to provide help~~)) programs.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At ((~~least these~~)) a minimum the following steps should be included in the adoption process:

(i) Accept the requirements of chapter 36.70A RCW((~~, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.~~));

(ii) Consider minimum guidelines developed by the department ((~~of community development~~)) under RCW 36.70A.050((~~.~~));

(iii) Consider other definitions used by state and federal regulatory agencies((~~.~~));

(iv) Consider definitions used by ((~~the county and city and other~~)) similarly situated counties and cities((~~.~~));

(v) Determine recommended definitions and check conformance with minimum definitions ((~~of~~)) in chapter 36.70A RCW((~~.~~));

(vi) Adopt definitions, classifications, and standards((~~.~~));

(vii) Apply definitions ((~~to the land~~)) by mapping designated natural resource lands((~~.~~)); and

(viii) Establish ((~~designation amendment~~)) procedures for amending natural resource lands and critical areas designations.

(c) Intergovernmental coordination.

(i) The ((~~Growth Management~~)) act requires coordination among ((~~communities and jurisdictions~~)) counties and cities to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process ((~~required under these guidelines~~)) may ((~~take~~)) include one of two ((~~forms~~)) options:

((~~(i)~~)) (A) Notification option: Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and ((~~all adjacent~~)) special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within

forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied information on how to locate a copy of the proposal. The department ((~~of community development~~)) may provide mediation services to counties and cities to help resolve disputed classifications or designations.

((~~(ii)~~)) (B) Interlocal agreement option: Adjacent ((~~jurisdictions~~)) counties and cities; all the cities within a county; or ((~~all the cities and~~)) several counties and the cities within them may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

(ii) Counties ((~~and/~~))or cities may begin with the notification option ((~~(~~)) in (c)(i)(A) of this subsection((~~)~~)) and choose to change to the interlocal agreement method ((~~(~~)) in (c)((~~(ii)~~)) (i)(B) of this subsection((~~)~~)) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the ((~~jurisdictions~~)) counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department ((~~of community development~~)) may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands ((~~and to identify known critical areas~~)). ((~~Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.~~

~~Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective.~~

~~For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but~~

~~not regulatory purposes, is advisable.~~

~~(e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.~~

~~(f)~~)) For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, ((~~chapter 36.70A RCW~~)) the act requires ((~~that they~~)) them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

((~~(g)~~)) (10) Designation amendment process.

(a) Land use planning is a dynamic process. Designation procedures ((~~for designation~~)) should provide a rational and predictable basis for accommodating change. These designation procedures should, at a minimum, provide for a sustainable amount of designated natural resource lands to ensure continued commercial production.

((~~Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.~~)) (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation ((~~changes~~)) amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy((~~.~~));

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner ((~~pertaining to the subject property.~~));

(iii) An error in designation((~~.~~));

(iv) New information on natural resource land or critical area status((~~.~~

~~(h)~~)); or

(v) A change in population growth rates, or consumption rates,

especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands ((~~of long-term commercial significance~~)). Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques ((~~which~~)) that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands ((~~of long-term commercial significance~~)) include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural ((~~and~~)), forest, and mineral resource lands ((~~of long-term commercial significance~~)) shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements ((~~that recognize~~)) recognizing that farming ((~~and forest~~)), forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural ((~~or~~)), forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

((~~Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.~~))

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-050 Agricultural resource lands. (1) In classifying and designating agricultural resource lands ((~~of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210.~~)), counties must approach the effort as a county-

wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be designated as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys((~~. These categories incorporate consideration of~~)), and are based on the growing capacity, productivity and soil composition of the land. ((~~Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:~~

~~(a)~~)) (c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The types of agriculture that exist in the area and their interaction and contribution to the regional economy;

(iii) The availability of water for agriculture and, if appropriate, the availability of large-scale irrigation or surface

water management infrastructure;

(iv) The availability of public facilities, including roads used in transporting agricultural products;

((~~(b)~~)) (v) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

((~~(c)~~)) (vi) The availability of public services;

((~~(d)~~)) (vii) Relationship or proximity to urban growth areas and to markets and suppliers;

((~~(e)~~)) (viii) Predominant parcel size;

((~~(f)~~)) (ix) Land use settlement patterns and their compatibility with agricultural practices;

((~~(g)~~)) (x) Intensity of nearby land uses;

((~~(h)~~)) (xi) History of land development permits issued nearby((~~;~~

~~(i)~~)), and the extent that plats and permits issued on lands within five hundred feet of designated agricultural resource lands have included a notice of potential incompatibility of residential development with activities associated with resource land uses per RCW 36.70A.060 (1)(b); and

(xii) Land values under alternative uses((~~; and~~

~~(j) Proximity of markets~~)).

((~~(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.~~

~~(3)~~)) (4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating at least the minimum amount of agricultural resource lands needed to maintain economic viability for the agricultural industry and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local ((~~agriculture stabilization and conservation service~~)) committee of the farm

service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may ((~~also~~)) include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-060 Forest resource lands ((~~resources~~)). (1) In classifying ((~~forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.~~

~~Each county and city shall~~)) and designating forest resource lands, counties must approach the effort as a county-wide or regional process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.

Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.

(c) The land has long-term commercial significance. When

determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local ((~~and regional~~)) physical, biological, economic, and land use considerations.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon emission off-sets, and improving wildlife habitat and connectivity for upland species.

(4) Counties and cities ((~~shall~~)) must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

((~~(1)~~)) (a) The availability of public services and facilities conducive to the conversion of forest land((~~.~~));

((~~(2)~~)) (b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements((~~.~~));

((~~(3)~~)) (c) The size of the parcels: Forest lands consist of predominantly large parcels((~~.~~));

((~~(4)~~)) (d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance((~~.~~));

((~~(5)~~)) (e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW((~~.~~));

((~~(6)~~)) (f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production((~~.~~

~~(7)~~)); and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-070 Mineral resource lands. (1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis.

(2) Counties and cities ((~~shall~~)) must identify and classify ((~~aggregate and~~)) mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cites may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

((~~(2)~~)) (3) Classification criteria. ((~~Areas shall be classified as~~))

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. ((~~The areas to be studied and their order of study shall be specified by counties and cities.~~

~~(a)~~)) Mineral resource lands are expected to be depleted of minerals over time, and counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

((~~(b) In~~)) (c) When classifying these areas, counties and cities should ((~~consider~~)) use maps and information on location and extent of mineral deposits provided by the ((~~Washington state~~)) department of natural resources, the United States Geological Service and ((~~the United States Bureau of Mines. Additionally, the department of natural resources has a detailed minerals classification system counties and cities may choose to use.~~

~~(c)~~)) any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based initially on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and

type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) Surface mines are temporary extractive uses that allow alternative land uses after mining is completed and the mine land is reclaimed, subject to approval;

(ii) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(iii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(4) Designation of mineral resource lands.

(a) Counties and cities ((~~should consider classifying~~)) must designate known and potential mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

((~~(d) In classifying mineral resource lands, counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:~~

~~(i) General land use patterns in the area;~~

~~(ii) Availability of utilities;~~

~~(iii) Availability and adequacy of water supply;~~

~~(iv) Surrounding parcel sizes and surrounding uses;~~

~~(v) Availability of public roads and other public services;~~

~~(vi) Subdivision or zoning for urban or small lots;~~

~~(vii) Accessibility and proximity to the point of use or market;~~

~~(viii) Physical and topographic characteristics of the mineral resource site;~~

~~(ix) Depth of the resource;~~

~~(x) Depth of the overburden;~~

~~(xi) Physical properties of the resource including quality and type;~~

~~(xii) Life of the resource; and~~

~~(xiii) Resource availability in the region.~~)) (b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of

transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-080 Critical areas. ((~~(1) Wetlands. The wetlands of Washington state are fragile ecosystems which serve a number of important beneficial functions. Wetlands assist in the reduction of erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs or property losses.~~

~~In designating wetlands for regulatory purposes, counties and cities shall use the definition of wetlands in RCW 36.70A.030(22). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they exist on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance.~~

~~(a) Counties and cities that do not now rate wetlands shall consider a wetlands rating system to reflect the relative function, value and uniqueness of wetlands in their jurisdictions. In developing wetlands rating systems, counties and cities should consider the following:~~

~~(i) The Washington state four-tier wetlands rating system;~~

~~(ii) Wetlands functions and values;~~

~~(iii) Degree of sensitivity to disturbance;~~

~~(iv) Rarity; and~~

~~(v) Ability to compensate for destruction or degradation.~~

~~If a county or city chooses to not use the state four-tier wetlands rating system, the rationale for that decision must be included in its next annual report to department of community development.~~

~~(b) Counties and cities may use the National Wetlands Inventory as an information source for determining the approximate distribution and extent of wetlands. This inventory provides maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior - Fish and Wildlife Service, and its wetland boundaries should be delineated for regulation consistent with the wetlands definition in RCW~~

~~36.70A.030(22).~~

~~(c) Counties and cities should consider using the methodology in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, cooperatively produced by the United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Soil Conservation Service, and United States Fish and Wildlife Service, that was issued in January 1989, and regulatory guidance letter 90-7 issued by the United States Corps of Engineers on November 29, 1990, for regulatory delineations.~~

~~(2) Aquifer recharge areas. Potable water is an essential life sustaining element. Much of Washington's drinking water comes from ground water supplies. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.~~

~~The quality of ground water in an aquifer is inextricably linked to its recharge area. Few studies have been done on aquifers and their recharge areas in Washington state. In the cases in which aquifers and their recharge areas have been studied, affected counties and cities should use this information as the base for classifying and designating these areas.~~

~~Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas are. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.~~

~~Counties and cities shall classify recharge areas for aquifers according to the vulnerability of the aquifer. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation.~~

~~(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:~~

~~(i) Depth to ground water;~~

~~(ii) Aquifer properties such as hydraulic conductivity and gradients;~~

~~(iii) Soil (texture, permeability, and contaminant attenuation properties);~~

~~(iv) Characteristics of the vadose zone including permeability and attenuation properties; and~~

~~(v) Other relevant factors.~~

~~(b) The following may be considered to evaluate the contaminant loading potential:~~

~~(i) General land use;~~

~~(ii) Waste disposal sites;~~

~~(iii) Agriculture activities;~~

~~(iv) Well logs and water quality test results; and~~

~~(v) Other information about the potential for contamination.~~

~~(c) Classification strategy for recharge areas should be to maintain the quality of the ground water, with particular attention to recharge areas of high susceptibility. In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.~~

~~(d) Examples of areas with a critical recharging effect on aquifers used for potable water, may include:~~

~~(i) Sole source aquifer recharge areas designated pursuant to the Federal Safe Drinking Water Act.~~

~~(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC.~~

~~(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act.~~

~~(iv) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.~~

~~(3) Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.~~

~~Counties and cities should consider the following when designating and classifying frequently flooded areas:~~

~~(a) Effects of flooding on human health and safety, and to public facilities and services;~~

~~(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs;~~

~~(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out without any measurable increase in flood heights;~~

~~(d) The potential effects of tsunami, high tides with strong winds, sea level rise resulting from global climate change, and greater surface runoff caused by increasing impervious surfaces.~~

~~(4) Geologically hazardous areas.~~

~~(a) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard. Some geological hazards can be reduced or mitigated by engineering, design, or modified~~

~~construction or mining practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided. This distinction should be considered by counties and cities that do not now classify geological hazards as they develop their classification scheme.~~

~~(a) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:~~

~~(i) Erosion hazard;~~

~~(ii) Landslide hazard;~~

~~(iii) Seismic hazard; or~~

~~(iv) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rockfalls, and differential settlement.~~

~~(b) Counties and cities should classify geologically hazardous area as either:~~

~~(i) Known or suspected risk;~~

~~(ii) No risk;~~

~~(iii) Risk unknown - data are not available to determine the presence or absence of a geological hazard.~~

~~(c) Erosion hazard areas are at least those areas identified by the United States Department of Agriculture Soil Conservation Service as having a "severe" rill and inter-rill erosion hazard.~~

~~(d) Landslide hazard areas shall include areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:~~

~~(i) Areas of historic failures, such as:~~

~~(A) Those areas delineated by the United States Department of Agriculture Soil Conservation Service as having a "severe" limitation for building site development;~~

~~(B) Those areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology coastal zone atlas; or~~

~~(C) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published as the United States Geological Survey or department of natural resources division of geology and earth resources.~~

~~(ii) Areas with all three of the following characteristics:~~

~~(A) Slopes steeper than fifteen percent; and~~

~~(B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and~~

~~(C) Springs or ground water seepage;~~

~~(iii) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of that epoch;~~

~~(iv) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes)~~

~~in subsurface materials;~~

~~(v) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;~~

~~(vi) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;~~

~~(vii) Areas that show evidence of, or are at risk from snow avalanches;~~

~~(viii) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;~~

~~(ix) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.~~

~~(e) Seismic hazard areas shall include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:~~

~~(i) The magnitude of an earthquake;~~

~~(ii) The distance from the source of an earthquake;~~

~~(iii) The type of thickness of geologic materials at the surface; and~~

~~(iv) The type of subsurface geologic structure.~~

~~Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table.~~

~~(f) Other geological events:~~

~~(i) Volcanic hazard areas shall include areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.~~

~~(ii) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.~~

~~(5) Fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.~~

~~(a) Fish and wildlife habitat conservation areas include:~~

~~(i) Areas with which endangered, threatened, and sensitive~~

~~species have a primary association;~~

~~(ii) Habitats and species of local importance;~~

~~(iii) Commercial and recreational shellfish areas;~~

~~(iv) Kelp and eelgrass beds; herring and smelt spawning areas;~~

~~(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;~~

~~(vi) Waters of the state;~~

~~(vii) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or~~

~~(viii) State natural area preserves and natural resource conservation areas.~~

~~(b) Counties and cities may consider the following when classifying and designating these areas:~~

~~(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces;~~

~~(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);~~

~~(iii) Protecting riparian ecosystems;~~

~~(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat areas that may negatively impact these areas;~~

~~(v) Establishing buffer zones around these areas to separate incompatible uses from the habitat areas; and~~

~~(vi) Restoring of lost salmonid habitat.~~

~~(c) Sources and methods~~

~~(i) Counties and cities should classify seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.~~

~~(ii) Counties and cities should determine which habitats and species are of local importance. Habitats and species may be further classified in terms of their relative importance.~~

~~Counties and cities may use information prepared by the Washington department of wildlife to classify and designate locally important habitats and species. Priority habitats and priority species are being identified by the department of wildlife for all lands in Washington state. While these priorities are those of the department, they and the data on which they are based may be considered by counties and cities.~~

~~(iii) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should at least consider the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.~~

~~(iv) Kelp and eelgrass beds; herring and smelt spawning areas.~~

~~Counties and cities shall classify kelp and eelgrass beds, identified by department of natural resources aquatic lands division and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the *Puget Sound Environmental Atlas, Volumes 1 and 2.* Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260 and the *Puget Sound Environmental Atlas.*~~

~~(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.~~

~~Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.~~

~~(vi) Waters of the state. Waters of the state are defined in Title 222 WAC, the forest practices rules and regulations. Counties and cities should use the classification system established in WAC 222-16-030 to classify waters of the state.~~

~~Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitats:~~

~~(A) Species present which are endangered, threatened or sensitive, and other species of concern;~~

~~(B) Species present which are sensitive to habitat manipulation;~~

~~(C) Historic presence of species of local concern;~~

~~(D) Existing surrounding land uses that are incompatible with salmonid habitat;~~

~~(E) Presence and size of riparian ecosystems;~~

~~(F) Existing water rights; and~~

~~(G) The intermittent nature of some of the higher classes of waters of the state.~~

~~(vii) Lakes, ponds, streams, and rivers planted with game fish.~~

~~This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the department of wildlife.~~

~~(viii) State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by department of natural resources.~~)) (1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the function and values of critical areas. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating

critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties are encouraged to also protect both surface and ground water resources, because these waters often recharge wetlands, streams and lakes that support listed species.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

NEW SECTION

WAC 365-190-090 Wetlands. (1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use

a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

NEW SECTION

WAC 365-190-100 Critical aquifer recharge areas. (1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from ground water. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of ground water in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to ground water;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results; and

(v) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the ground water, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Counties and cities may limit the number, location, and allowed uses of permit-exempt wells, especially within critical aquifer recharge areas. Counties and cities choosing this approach should consult with the department of ecology.

NEW SECTION

WAC 365-190-110 Frequently flooded areas. Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

NEW SECTION

WAC 365-190-120 Geologically hazardous areas. (1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include, at a minimum, those areas identified by the United States Department of Agriculture Natural Resources Conservation Service as having a likely significant erosion hazard. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology.

(6) Landslide hazard areas include areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the

department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than fifteen percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or ground water seepage.

(c) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from

volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

NEW SECTION

WAC 365-190-130 Fish and wildlife habitat conservation areas. (1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. Intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC, and should consider the following:

(a) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(b) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(c) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(d) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(e) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(f) Potential for restoring lost and impaired salmonid habitat;

(g) Potential for designating areas important for local and ecoregional biodiversity; and

(h) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of

critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington. Stream types are defined and classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish.

This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.